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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

BC 429966

11 JP HYAN, an individual,
12
13 Plaintiff,

14 vs.

15 Rutter, Hobbs & Davidoff, Incorporated, a
16 corporation; Brian L. Davidoff, Esq., an
17 individual; Fred A. Fenster, Esq., an
18 individual; Geoffrey M. Gold, Esq., an
19 individual; Olivia Goodkin, Esq., an
20 individual; Frank D. Hobbs, Esq., an
21 individual; Rosslyn (Beth) Hummer, Esq., an
22 individual; and DOES 1 through 100,
23 inclusive,

24 Defendants.

CASE NO.

COMPLAINT FOR COMPENSATORY
AND PUNITIVE DAMAGES:

- (1) PROFESSIONAL NEGLIGENCE
- (2) BREACH OF FIDUCIARY DUTY
- (3) BREACH OF CONTRACT
- (4) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
- (5) NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
- (6) NEGLIGENT MISREPRESENTATION
- (7) FRAUD AND DECEIT

DEMAND FOR JURY TRIAL

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1 Plaintiff JP Hyan (“Plaintiff” or “Hyan”) complains of the Defendants, and each of
2 them, and alleges as follows:

3 **Parties**

4 1. Plaintiff JP Hyan is an individual currently residing in the State of Utah and
5 formerly a resident of the County of Los Angeles, California.

6 2. Plaintiff is informed and believes and thereon alleges, that Defendant Rutter,
7 Hobbs & Davidoff, Incorporated (“Rutter, Hobbs & Davidoff”), was at all times mentioned
8 herein and now is a corporation engaged in the practice of law, organized and existing under
9 and by virtue of the laws of the State of California, and that said Defendant was and now is
10 authorized to engage and is engaged in the practice of law in the State of California, and that
11 said Defendant has regularly conducted business in the State of California.

12 3. Plaintiff is informed and believes, and thereon alleges, that Defendant Brian L.
13 Davidoff (“Davidoff”) is an attorney licensed to practice law in the State of California and
14 at all relevant times has been a shareholder and partner in the defendant law firm Rutter,
15 Hobbs & Davidoff, and a resident of California. Plaintiff is informed and believes, and
16 thereon alleges, that beginning in approximately 2006 and continuing through to present,
17 Davidoff has been head of the Executive Committee and served as Managing Director of
18 defendant law firm Rutter, Hobbs & Davidoff.

19 4. Plaintiff is informed and believes, and thereon alleges, that Defendant Fred A.
20 Fenster (“Fenster”) is an attorney licensed to practice law in the State of California and at all
21 relevant times has been a shareholder and partner in the defendant law firm Rutter, Hobbs &
22 Davidoff, and a resident of California, practicing law in the State of California.

23 5. Plaintiff is informed and believes, and thereon alleges, that Defendant
24 Geoffrey M. Gold (“Gold”) is an attorney licensed to practice law in the State of California
25 and at all relevant times has been either an associate and employee of the defendant law firm
26 Rutter, Hobbs & Davidoff or a shareholder and partner in the defendant law firm Rutter,
27 Hobbs & Davidoff, and a resident of California, practicing law in the State of California.

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1 6. Plaintiff is informed and believes, and thereon alleges, that Defendant Olivia
2 Goodkin (“Goodkin”) is an attorney licensed to practice law in the State of California and at
3 all relevant times has been a shareholder and partner in and served on the Executive
4 Committee of the defendant law firm Rutter, Hobbs & Davidoff, and a resident of
5 California, practicing law in the State of California.

6 7. Plaintiff is informed and believes, and thereon alleges, that Defendant Frank
7 D. Hobbs (“Hobbs”) is an attorney licensed to practice law in the State of California and at
8 all relevant times was a shareholder and attorney in the defendant law firm Rutter, Hobbs &
9 Davidoff, and a resident of California. Plaintiff is informed and believes, and thereon
10 alleges, that through at least 2006, Hobbs served as Managing Director of Rutter, Hobbs &
11 Davidoff, through at least August 2008 was a partner and shareholder in Rutter, Hobbs &
12 Davidoff, and that from August 2008 Hobbs has been a shareholder in and of counsel to the
13 defendant law firm Rutter, Hobbs & Davidoff, practicing law in the State of California.

14 8. Plaintiff is informed and believes, and thereon alleges, that Defendant Rosslyn
15 (Beth) Hummer (“Hummer”) is an attorney licensed to practice law in the State of
16 California and at all relevant times has been either an associate and employee of the
17 defendant law firm Rutter, Hobbs & Davidoff or a shareholder and partner in the defendant
18 law firm Rutter, Hobbs & Davidoff, and a resident of California, practicing law in the State
19 of California.

20 9. All Defendants (collectively “Defendants”) in paragraphs 2-8 represented
21 Plaintiff and provided legal services and advice and were in an attorney client relationship
22 with Plaintiff at all relevant times to the events set forth in this complaint. Among other
23 things as set forth herein, each Defendant breached its duty to Plaintiff by failing to
24 represent him according to the standard of care required of attorneys and/or failing to
25 supervise attorneys who failed to represent Plaintiff according to the standard of care and
26 these breaches of duty caused Plaintiff harm and damage.

27 10. The true names and capacities, whether individuals, legal corporations, or
28 otherwise, of Defendant DOES 1 through 100, inclusive, and each of them, are unknown to

1 Plaintiff at this time and therefore Plaintiff sues said Defendants by such fictitious names.
2 Plaintiff will amend this Complaint to show the true names and capacities of the fictitiously-
3 named Defendants when they have been ascertained. Plaintiff is informed and believes, and
4 thereon alleges, that each fictitiously named Defendant is liable in some manner to Plaintiff
5 respecting the events and damages referred to in this Complaint.

6 11. Plaintiff is informed and believes, and thereon alleges, that at all times
7 mentioned herein, each of the Defendants, including all DOE Defendants sued under
8 fictitious names, was the agent, employee, partner, shareholder, joint venturer, officer,
9 director, owner, successor and/or alter ego of every other Defendant, and acting wholly
10 within the course and scope of such agency, employment, and/or other relationship in
11 conducting the actions and activities set forth in this Complaint, and generally or
12 specifically approved the actions, activities or omissions of each other Defendant in advance
13 of their being taken, or generally or specifically approved the failure to take necessary and
14 appropriate actions and activities in advance, and /or subsequently ratified each other
15 Defendant's conduct. References made herein to "Defendants" shall be deemed to mean the
16 acts of Defendants acting individually, jointly, and/or severally.

17 12. Venue is proper in Los Angeles County because Rutter, Hobbs & Davidoff
18 maintains its principal office in Los Angeles County.

19 **Hyan Initiates the LACERA Program and Brings it to Lowe**

20 13. Mr. JP Hyan is a former Los Angeles County Sheriff's Deputy, who retired
21 from law enforcement in 1988 and began working in the financial industry. Hyan, who was
22 a licensed stock broker and investment advisor, worked for Drexel Burnham, Merrill Lynch
23 and then Wertheim-Schroeder between 1988 and the early 1990's. In or about 1990, Hyan
24 was approached by a construction client for his assistance in securing funding for home
25 building projects. This inquiry sparked Hyan's unique and untried idea of creating a
26 program whereby a public pension fund would invest in homebuilders by funding their
27 home building projects. Hyan decided to approach one such public pension fund, the Los
28 Angeles County Employees' Retirement Association ("LACERA"). Plaintiff was

1 professionally acquainted with Robert Hermann, a member on the Board of Investments and
2 the Board of Retirement for LACERA. Hyan developed a business plan for LACERA
3 which would include not only his services but also a suitable financial management
4 company to develop and manage the project. In his search for a company he located Lowe
5 Enterprises, Inc., a privately owned national real estate company active in commercial,
6 industrial and residential property investment, management and development.

7 14. In or about 1992, Hyan met with Lowe Enterprises, Inc. ("Lowe") and
8 described his business plan for LACERA, including the opportunity this presented for
9 Lowe. In due course, Lowe agreed to hire Hyan to launch the program and formally
10 proceed with the business model for LACERA; the program would later become known as
11 the LACERA Single Family Housing Program ("LACERA Program"). Hyan went to work
12 for Lowe Enterprises Investment Management ("LEIM"), a registered investment advisor
13 and wholly owned subsidiary of Lowe, in 1992-93, and was instrumental in negotiating an
14 agreement between LEIM and LACERA. In recognition of his key role in creation of the
15 LACERA Program, as part of his employment agreement LEIM agreed to pay Hyan 10% of
16 the gross fees received by LEIM from the LACERA Program (also referred to as the
17 LACERA Residential Mortgage Account). In or about 1995, the LACERA Program was
18 launched; it was a success from the beginning for both LACERA as well as for LEIM and
19 Lowe, over the course of twelve years generating many tens of millions of dollars in
20 management and incentive fees to Lowe/LEIM, and it became increasingly profitable, so
21 that as of 2006 it brought in \$27 million in management and incentive fees to LEIM that
22 year.

23 **Hyan's Retention of Rutter, Hobbs & Davidoff and Negotiation of the 1997 Separation**
24 **Agreement**

25 15. In 1997, Hyan decided to separate from Lowe and LEIM, and in January or
26 February of 1997, Hyan retained Rutter, Hobbs & Davidoff to assist in negotiating, settling
27 and memorializing separation terms and a formal separation agreement ("Separation
28 Agreement") and a related consulting agreement ("Consulting Agreement"). Frank D.

1 Hobbs was the primary attorney responsible for handling the matter, negotiating with
2 Lowe/LEIM and its counsel, and advising Hyan as to the terms and the formal agreements.
3 Geoffrey Gold also met with Mr. Hyan and Mr. Hobbs, reviewed the file and advised Hyan
4 on the matter.

5 16. Rutter, Hobbs & Davidoff did not obtain a written fee agreement with Hyan in
6 1997. Rutter, Hobbs & Davidoff represented to Hyan that it would fully and properly
7 advise, protect, document and memorialize Hyan's interests in the negotiation of his
8 separation from Lowe/LEIM, and that it would edit, draft, review and approve the formal
9 documentation of any agreements with Lowe/LEIM for Hyan's benefit. Relying on Rutter,
10 Hobbs & Davidoff's representations, in or about January or February 1997, Hyan retained
11 Rutter, Hobbs & Davidoff to protect his interests in connection with his departure from
12 Lowe and LEIM. Rutter, Hobbs & Davidoff was retained to fully and properly advise,
13 protect, document and memorialize Hyan's interests in the negotiation of his separation
14 from Lowe/LEIM, and to edit, draft, review and approve the Separation Agreement and
15 Consulting Agreement for Hyan's benefit. In fact, Rutter, Hobbs & Davidoff, including but
16 not limited to attorneys Frank Hobbs and Geoffrey Gold, did perform legal services for
17 Hyan, but unknown to Hyan in fact did not fulfill these representations, failed to fully and
18 properly advise, protect, document and memorialize Hyan's interests in the negotiation of
19 his separation from Lowe/LEIM, and failed to properly edit, draft, review and approve the
20 Separation Agreement for Hyan's benefit, such that Hyan's Separation Agreement did not
21 document the terms which Hyan had obtained from Lowe/LEIM and which were the object
22 of the representation, and he was divested of the right to the on-going annual compensation
23 which he bargained for and which Lowe/LEIM was willing to agree to.

24 17. In September 1997, Hyan met personally with Robert Lowe, the president of
25 Lowe, and agreed on a basic structure and general terms with respect to Mr. Hyan's
26 separation from Lowe and LEIM. One of the key points agreed upon was that Mr. Hyan
27 would continue to receive 10 percent of the gross fees generated by the LACERA program
28 indefinitely. Hyan then relayed the major points of the agreement to Hobbs, including that

1 the LACERA payments would continue “indefinitely” and “in perpetuity,” and relied on
2 Hobbs to work with Lowe’s in-house counsel, John DeMarco, to formally document the
3 deal. It was made clear to Rutter, Hobbs & Davidoff that the primary object of the
4 representation was to secure Hyan’s right to continue to receive payments from the
5 LACERA program indefinitely. Indeed, this was acknowledged by Rutter, Hobbs &
6 Davidoff in its briefing submitted in a subsequent related arbitration recommended, initiated
7 and conducted by Rutter, Hobbs & Davidoff and discussed in more detail herein, which
8 states “Notably, the most important right to be protected for Hyan in the entire Separation
9 Agreement was the right to continue to receive proceeds from the LACERA program.
10 Indeed... Hyan testified to his understanding that the right to payment would exist even if
11 the housing program were transferred by LEIM... Hyan relied on all the terms of his
12 Separation Agreement to protect his interest in the revenue stream from the LACERA
13 housing program, even in the event of a transfer of that revenue stream.”

14 18. On September 16, 1997, Hobbs drafted a memo for Hyan to send to Lowe
15 listing as a top priority the key term that Hyan’s right to compensation under his existing
16 agreement would “continue indefinitely.” Rutter, Hobbs & Davidoff subsequently received
17 draft separation and consulting agreements from counsel for Lowe. The separation
18 agreement clearly provides that Hyan would “continue to receive ... ten percent ... of the
19 gross fees received from [LACERA]” but only “so long as [LEIM] continues to receive such
20 fees.” This provision was never modified, and is included in the final version of the
21 agreement. Rutter, Hobbs & Davidoff never proposed necessary changes to this provision,
22 never made necessary changes, and never suggested necessary changes that would protect
23 Hyan’s interest in the LACERA fee stream should Lowe or LEIM transfer the account to
24 another entity. Also, during the exchange of draft separation agreements, counsel for Lowe
25 put into the contract a standard clause providing that the agreement would be binding on the
26 parties’ “successors and assigns.” This addition was not proposed by or commented on by
27 Rutter, Hobbs & Davidoff. It was included in the final contract.

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1 19. Despite the object of representation – to preserve Hyan’s right to a percentage
2 of the LACERA proceeds indefinitely – being clear, Rutter, Hobbs & Davidoff did nothing
3 to achieve it and in fact advised Mr. Hyan to sign documents which left his interests entirely
4 at risk and unprotected as to foreseeable events. Despite the agreements of Plaintiff and
5 Lowe which Rutter, Hobbs & Davidoff was to make sure were reflected in the agreement in
6 proper legal terms, Rutter, Hobbs & Davidoff did not propose or include any contract
7 provisions that would either preclude or limit Lowe or LEIM from moving the LACERA
8 stream of income to a third party, or provide a method of compensation for Hyan in the
9 event it did make such a move. There were a number of alternative provisions that Rutter,
10 Hobbs & Davidoff could and should have included in the contract in order to carry out
11 Hyan’s and Lowe’s intent and protect Hyan’s interests, but which it did not include. In
12 October 1997, Rutter, Hobbs & Davidoff advised Hyan to sign the final Separation and
13 Consulting Agreements, and Hyan did so relying on Rutter, Hobbs & Davidoff’s advice and
14 believing that the formal documents carried out his intent and protected his interests as he
15 had retained Defendants to do.

16 20. Had Rutter, Hobbs & Davidoff included, proposed or negotiated for
17 appropriate contract provisions that would either have precluded or limited Lowe or LEIM
18 from moving the LACERA stream of income to a third party or from doing so without
19 proper compensation to Hyan, as it could and should have done, it is reasonable to conclude
20 that Lowe and/or LEIM would have accepted them without reduction in the benefits to Hyan
21 under the agreement. Lowe and LEIM wanted to keep this profitable line of business and
22 were prepared to do so on the basis of paying 10% from the stream of revenue Hyan had
23 produced, which they in fact did do for a decade, consistent with the intent of the
24 arrangement. When the Separation Agreement was entered into, Hyan had significant
25 leverage as to the existing client relationship with LACERA, including by taking the
26 business he brought to Lowe with him or to another party, or by competing for it. Further,
27 Lowe and/or LEIM had no apparent intent to monetize or otherwise transfer the LACERA
28 account to a third party in 1997, as demonstrated by the fact that Lowe/LEIM did not do so

1 for ten years after the agreement was executed. At the time, Lowe/LEIM and Hyan entered
2 into a detailed consulting agreement that was predicated on an ongoing relationship between
3 Lowe/LEIM and LACERA. Had Lowe or LEIM resisted such a request for proper
4 prophylactic provisions in 1997, this would have alerted Hyan that what might otherwise
5 seem a low risk was actually a high risk, cause him to more aggressively protect his interests
6 and put Lowe and LEIM in a weaker bargaining position, meaning that Lowe and/or LEIM
7 would be even more likely to agree to one of the customary alternatives proposed. If
8 Defendants had competently represented Plaintiff and properly protected his interests, he
9 could and would have obtained a clause in the final contract achieving exactly what
10 Defendants understood the object of the Separation Agreement to be.

11 21. Following execution of the Separation Agreement in 1997, Lowe and/or
12 LEIM continued to make the 10% payments to Hyan for ten years according to their
13 expressed intent at the time of the Separation Agreement and according to the intent of
14 Plaintiff. During this period, Lowe and/or LEIM created a wholly owned subsidiary and
15 California corporation called Lowe Enterprises Residential Advisors, Inc. (LERA), which
16 managed the LACERA Program, had the contract with LACERA and received fees from
17 LACERA. After it deducted its expenses, LERA distributed all remaining monies to its
18 parent LEIM, and either LEIM or Lowe continued to pay Hyan his share of the proceeds.
19 Hyan received a yearly income stream that exceeded \$2.5 million by 2006.

20 **Hyan's Return to Rutter, Hobbs & Davidoff in 2007 to Fix the Problem Once**
21 **Payments Under the Separation Agreement Stopped**

22 22. In late 2006 or early 2007, Lowe and LEIM transferred its relationship with
23 LACERA to a third party, TriPacific Capital Advisors, LLC, ("TriPacific") through the sale
24 of its wholly owned subsidiary LERA. Lowe and/or LEIM stopped making payments to
25 Hyan after December 2006, and TriPacific, which did not sign any contracts with Plaintiff,
26 never made payments to Hyan.

27 23. Thereupon, in January 2007 Hyan contacted Rutter, Hobbs & Davidoff for
28 assistance to address and rectify the problem so that he could continue to receive the

1 intended benefits under the Separation Agreement they represented him on and advised him
2 to sign. Instead of acknowledging that under the 1997 Separation Agreement, Lowe/LEIM
3 had the right to stop payments once neither of these legal entities was receiving fees from
4 the LACERA program, and that the problem was in the contract language itself, Rutter,
5 Hobbs & Davidoff covered up its original mistakes by misdirecting Hyan to initiate and file
6 litigation against TriPacific and related entities and individuals for the payments he was no
7 longer receiving from Lowe/LEIM. In early 2007, Hyan met with Hobbs and Gold, who
8 told him that under the Separation Agreement he had the right to continued payments from
9 the third party. Rutter, Hobbs & Davidoff did not acknowledge or admit to the mistakes it
10 had made in reviewing and approving the contract without proper terms to protect Hyan or
11 achieve the object of the agreement. What the standard of care for attorneys required was
12 that they candidly advise Hyan that because of the contract Rutter, Hobbs & Davidoff had
13 handled and approved, there was no basis for asserting that TriPacific had any obligation to
14 continue payments to Hyan because it was not a successor to Lowe/LEIM, and it had not
15 been assigned any obligations of Lowe/LEIM. The standard of care required Defendants to
16 tell Hyan then that, given the contract terms and the sale of the line of business to a third
17 party, there was no longer a duty of Lowe or LEIM to pay Hyan even though the LACERA
18 program he created continued; and even if any duties could be deemed to have transferred to
19 TriPacific, this did not include payment of the 10% commission.

20 Instead, Hobbs and Gold told Hyan that they had reviewed the file and that Tri-
21 Pacific was obligated to pay Hyan his 10% under the Separation Agreement. Rutter, Hobbs
22 & Davidoff advised that TriPacific had an obligation to pay Hyan because it was a
23 “successor or assign” under the Separation Agreement. Rutter, Hobbs & Davidoff advised
24 Hyan to file a lawsuit and subsequently to proceed with arbitration against Tri-Pacific and
25 related entities and individuals.

26 At the time it recommended this course of action to Hyan, it was clear that there was
27 no basis for filing suit against TriPacific because there was no breach of the contract
28 Defendants had obtained and recommended, and because TriPacific was neither a successor

1 or assign under clear, straightforward California law. Rutter, Hobbs & Davidoff was
2 knowingly taking a position with no legitimate basis whatsoever and doing so for an
3 improper purpose – to deflect attention from its own original malpractice.

4 24. Rutter, Hobbs & Davidoff did not obtain a written fee agreement with Hyan in
5 2007 when he came to them to address the problem of Lowe/LEIM stopping payments
6 under the 1997 Separation Agreement. Rutter, Hobbs & Davidoff represented to Hyan that
7 it would fully and properly protect his interests, and truthfully advise him as to the proper
8 course of action to remedy the problem and obtain compensation for the damages caused by
9 the cessation of payments under the contract. Relying on Rutter, Hobbs & Davidoff's
10 representations, in or about January 2007, Hyan agreed to go forward with Rutter, Hobbs &
11 Davidoff to fully and properly protect his interests, and to truthfully advise him as to the
12 proper course of action to obtain compensation for the damages caused by the cessation of
13 payments by Lowe/LEIM under the 1997 Separation Agreement. After more than a year of
14 representation had gone by, Rutter, Hobbs & Davidoff presented and had Hyan execute a
15 written fee agreement in April 2008, on the eve of the TriPacific arbitration hearing. Rutter,
16 Hobbs & Davidoff represented to Hyan, among other things, that it would use its best
17 efforts, inform Hyan of the truth as it saw it, keep Hyan informed, and tell Hyan what was
18 going to happen step by step. At that time, Rutter, Hobbs & Davidoff also required Hyan to
19 execute a Deed of Trust on his home in Park City, Utah, in favor of Rutter, Hobbs &
20 Davidoff, in order to secure payment of fees and costs incurred under the retention.

21 In fact, Rutter, Hobbs & Davidoff, including among others, attorneys Hobbs, Fenster,
22 Gold, Goodkin, Davidoff, and Hummer, did represent Hyan in this improper and unjustified
23 litigation and gave him legal advice during this time, but did not act within the proper
24 standard of care or according to their own representations as to the standard they would use
25 in such representation, and in fact did not fully and properly protect his interests, or
26 truthfully advise him as to the proper course of action to obtain compensation for damages
27 caused by the cessation of payments by Lowe/LEIM under the 1997 Separation Agreement.
28 Defendants advised Plaintiff that the Separation Agreement they had advised him to sign

1 protected him in the circumstances presented, that he was entitled to his 10% commission
2 from TriPacific, and that he would prevail in the litigation they would file on his behalf.
3 Defendants did not tell Hyan he was likely to lose the litigation it initiated and
4 recommended, or that he had exposure for the attorneys' fees of the opposing party.

5 The TriPacific Litigation

6 25. Hyan followed Rutter, Hobbs & Davidoff's advice and on April 13, 2007,
7 Rutter, Hobbs & Davidoff filed suit on behalf of Hyan against Tri-Pacific and related
8 entities in Los Angeles Superior Court, alleging claims for Declaratory Relief and
9 Intentional Interference with Contract. As a result of pursuing the improper and
10 unnecessary litigation against TriPacific and related entities, Rutter, Hobbs & Davidoff
11 charged Hyan over \$610,000 in attorneys' fees and costs (including interest). Frank Hobbs
12 was the main attorney at Rutter, Hobbs & Davidoff pursuing the TriPacific litigation. On or
13 about May 2007, Rosslyn (Beth) Hummer was assigned as an associate to the matter. She
14 worked closely with Hobbs and often advised and worked with Hyan during the TriPacific
15 litigation through at least December 2008.

16 26. In its complaint against TriPacific, Rutter, Hobbs & Davidoff asserted that the
17 standard successor and assign clause, which had been inserted by Lowe's counsel, applied
18 to TriPacific as a "successor or an assign" of Lowe or LERA or some other LERA affiliated
19 entity. On July 23, 2007, counsel for TriPacific filed a petition to compel arbitration of the
20 dispute, noting that according to Rutter, Hobbs & Davidoff's complaint, Hyan's cause of
21 action arose directly from the Separation Agreement, and thus was subject to arbitration.

22 In September 2007, Rutter, Hobbs & Davidoff filed a brief opposing TriPacific's
23 petition to compel arbitration, arguing that because TriPacific denied liability under the
24 Separation Agreement, it was not entitled to seek arbitration under that agreement. In the
25 brief, Rutter, Hobbs & Davidoff expressly acknowledged that TriPacific and the individual
26 defendants "are not and cannot be shown to be legally related to any party to an arbitration
27 agreement with" Hyan and that "there is no common ownership or identity of interest"
28 between TriPacific and LEIM or Lowe. In the same brief, RDH also argued (inconsistently)

1 that TriPacific and LERA had “secretly engage[d] in a sham transaction to transfer ...
2 LACERA ... to a newly formed entity.” After argument, the Los Angeles Superior Court
3 granted TriPacific’s opinion and ordered the matter to arbitration.

4 27. Rutter, Hobbs & Davidoff then pursued arbitration against TriPacific and
5 related entities and individuals before the AAA. The arbitration process culminated in a
6 week long arbitration hearing in April 2008, followed by post-hearing briefing. The
7 Arbitrator ruled entirely against Hyan and in favor of respondents TriPacific and related
8 entities, finding that there had been no breach of the Separation Agreement and that
9 TriPacific was neither a successor nor assign of Lowe/LEIM. The Arbitrator issued his
10 Interim Award in June, 2008 and his Final Award in October, 2008, noting that “there is an
11 easy case to be made that Hyan never intended matters to work out such that anyone would
12 enjoy any of the fruits of his labor without compensating him for it,” but because LEIM
13 “continued to exist,” neither TriPacific nor the other respondents could be a “successor” to
14 LEIM under the law. The arbitrator observed that he was “unfamiliar with any doctrine by
15 which the act of accepting an assignment of rights imposes on the assignee obligations
16 beyond those set forth in the assignment agreement itself,” and also ruled that there had
17 been no evidence of any contract breach. The arbitrator awarded TriPacific \$419,510 in
18 attorneys’ fees, expenses and arbitration costs, which Hyan was then obligated to pay.

19 28. After the Interim Award issued in June, 2008, Hyan learned that Hobbs was
20 being “forced out” of his partnership at Rutter, Hobbs & Davidoff, but that he would be Of
21 Counsel. He was informed that Fred Fenster was to be taking over his matter as primary
22 attorney and working with Beth Hummer. Hyan demanded a meeting with the Executive
23 Committee of Rutter, Hobbs & Davidoff to discuss the case. On August 7, 2008, Hyan met
24 with Brian Davidoff, Fred Fenster and Olivia Goodkin, who were on the Executive
25 Committee of Rutter, Hobbs & Davidoff, to discuss his frustration with the representation.
26 Fred Fenster told Hyan that he had reviewed everything in the case file. At no time did
27 anyone at this meeting tell Hyan that there was any problem in the original drafting of the
28 1997 Separation Agreement, or that the continued pursuit of the action against TriPacific

1 was meritless, and doomed to failure, and that he would thus be exposed for TriPacific's
2 attorney fees and costs. Instead, they encouraged and advised Hyan to continue with the
3 case against TriPacific, and recommended further extensive briefing. In fact, Fred Fenster
4 continued to tell Hyan up until the December 22, 2008 hearing he handled on the case that
5 success was almost "guaranteed." Hyan continued to follow Rutter, Hobbs & Davidoff's
6 advice, and Rutter, Hobbs & Davidoff continued to bill costs and fees to Hyan. After the
7 Interim Award issued in June 2008, Hyan also continued to consult with Hobbs both before
8 and after the August 7, 2008 meeting and Hobbs continued to advise him about the case.
9 Hobbs told Hyan in or about mid-August 2008 that Hobbs was still Of Counsel with and an
10 owner of the firm. At no time did Hobbs advise Hyan that he was no longer representing
11 him or that he was not associated with the Rutter, Hobbs & Davidoff firm.

12 29. TriPacific moved in Los Angeles Superior Court to confirm the award, which
13 Rutter, Hobbs & Davidoff opposed, and Rutter, Hobbs & Davidoff also moved to vacate the
14 award and disqualify the arbitrator in December 2008. Hummer and Fenster appeared at the
15 December 22, 2008 hearing on behalf of Hyan. The court denied Rutter, Hobbs &
16 Davidoff's motions, and confirmed the award. Judgment was entered in favor of TriPacific
17 by the Los Angeles Superior Court on December 22, 2008, in the amount of \$461,665.10
18 plus 10% interest, which now totals over \$500,000.

19 30. Defendants have represented Plaintiff on this and other matters beginning in
20 1997 and continuing until at least May 26, 2009. Defendants have continuously represented
21 Plaintiff on the Lowe/LEIM matter, including negotiation of the Separation Agreement in
22 1997 through advising and representing Plaintiff relating to the cessation of payments in late
23 2006/early 2007 and pursuing the litigation against TriPacific until at least May 26, 2009.

24 31. Pursuant to a written tolling agreement between Plaintiff and Defendants, all
25 legal and equitable limitations periods, including all statutes of limitations, applicable to
26 Plaintiff's claims against Defendants, were tolled for a period of thirty-one (31) days
27 between December 15, 2009 and January 15, 2010.

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Plaintiff's Damages

1
2 32. Hyan had not received his 10% of the LACERA proceeds since December
3 2006, his main source of income. As Rutter, Hobbs & Davidoff set out in its First Amended
4 Complaint filed on behalf of Hyan, "before January 2007, Plaintiff [Hyan] received greater
5 than \$2,000,000 annually as his agreed share of the revenues of LER Advisors, and has been
6 damaged by Defendants' refusal to pay him." The loss of the 10% of gross fees from the
7 LACERA Program, including the past missed payments from the end of 2006 and into the
8 future, discounted to present value at a conservative 10% per annum, results in damages of
9 \$24.6 million.

10 33. On top of the loss of his main source of income since December 2006, Hyan
11 incurred attorneys' fees and costs to Rutter, Hobbs & Davidoff in pursuing the TriPacific
12 action, and then in December 2008 had the judgment entered against him, including
13 TriPacific's attorney fees and costs. Hyan, without his main source of income, did not have
14 funds available to pay the judgment. TriPacific, through its attorneys, began in 2009 to take
15 actions to levy on the judgment, attaching both Hyan's and his wife Francine Hyan's
16 property in Utah and California, including real estate, financial accounts and personal
17 property. Foreclosure proceedings were initiated on Mr. and Mrs. Hyan's homes both in
18 Utah and in California.

19 On or about May 18, 2009, law enforcement personnel and attorneys for TriPacific
20 entered Hyan's home in Park City, Utah, and seized a great deal of personal property while
21 Hyan was present. Hyan began feeling chest pains on May 18 during this "raid," and on
22 May 20, 2009, suffered a cardiac incident and was hospitalized, as a result of stress from
23 these events.

24 34. As a direct result of Defendants' failure to fully and properly advise, protect,
25 document and memorialize Hyan's interests in the negotiation of his separation from
26 Lowe/LEIM, and to properly edit, draft, review and approve the Separation Agreement for
27 Hyan's benefit, and failure to fully and properly protect his interests and truthfully advise
28 him as to the proper course of action to compensate him for damages caused by the

1 cessation of payments by Lowe/LEIM under the 1997 Separation Agreement, Hyan has
2 suffered substantial financial injury and has been put under extreme and undue pressure,
3 anxiety and distress thereby. Defendants' breach of their duty to Plaintiff caused Plaintiff to
4 suffer this emotional distress and Defendants knew that this would be the probable result of
5 their conduct, or engaged in intentional conduct to cover up their own errors and with
6 reckless or conscious disregard of the probability of causing Plaintiff to suffer emotional
7 distress.

8 35. As a result of Defendants' actions and omissions, including the failure to
9 protect Hyan in negotiating the contract and the improper action Rutter, Hobbs & Davidoff
10 conceived and pursued against TriPacific, Hyan has been damaged in an amount of at least
11 \$30,558,000 according to proof. This includes \$24.6 million in past and future payments
12 from the LACERA Program, \$610,000 in costs and attorneys fees charged by Rutter, Hobbs
13 & Davidoff for the action against TriPacific which should not have been brought, \$500,000
14 for the judgment against him as a result of the improper action, \$75,000 in additional
15 monies being added to the judgment for costs incurred by TriPacific in the enforcement
16 actions, \$72,000 to date incurred to law firms defending against the enforcement
17 proceedings taking place in Utah and California, \$3,184,000 for losses caused by the forced
18 sale of his homes and \$1,417,000 for the loss in the value of personal property seized and
19 sold to satisfy the judgment against him. Mr. Hyan has incurred over \$100,000 in medical
20 expenses for treatment related to the stress resulting from the loss of his income stream, the
21 judgment in the TriPacific litigation and the enforcement proceedings.

22 **FIRST CAUSE OF ACTION**

23 (For Professional Negligence)

24 36. Plaintiff hereby repeats and realleges the factual allegations contained in
25 paragraphs 1 through 35 above as though set forth in full herein.

26 37. Defendants represented Plaintiff as his attorneys and had an attorney client
27 relationship.

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1 38. When Defendants handled Plaintiff's legal matters, Defendants had a legal
2 duty to exercise that degree of learning, and use the degree of care and skill, ordinarily
3 possessed by a reputable attorney or law firm, practicing under similar circumstances.
4 Defendants had a duty to use reasonable diligence and their best judgment in the exercise of
5 skill and the application of learning. Defendants had a duty to use the skill, knowledge and
6 care that a reasonably careful attorney or law firm would have used in similar
7 circumstances. Defendants owed all customary professional and fiduciary duties to Plaintiff
8 and owed a duty of loyalty to Plaintiff not to act adversely to Plaintiff's interests, and to
9 refrain from taking any action or omitting to take any action which was likely to result in
10 loss, injury, damage, harm or detriment to Plaintiff.

11 39. As a result of the actions, errors and omissions, set forth above, Defendants
12 have breached such legal duties, and have been professionally negligent.

13 40. But for Defendants' professional negligence in connection with the
14 negotiation, drafting, and approval of the 1997 Separation Agreement, Plaintiff would have
15 obtained a better result.

16 41. As a direct and proximate result of such professional negligence, Plaintiff has
17 suffered damages as to items set forth in paragraphs 32-35 in the amount of \$30,558,000,
18 together with prejudgment interest thereon at the legal rate, as well as additional damages,
19 including but not limited to non-economic damages for severe emotional distress, attorneys'
20 fees, costs, and expert fees, which amount is yet to be ascertained.

21 42. The conduct of Defendants, and each of them, as alleged above, was grossly
22 negligent, unconscionable, fraudulent, oppressive, malicious and done intentionally or in
23 conscious disregard of Plaintiff's rights and in order to protect themselves and further their
24 own professional and financial self interest at Plaintiff's expense and to his detriment so as
25 to justify an award of punitive damages.

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SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty)

43. Plaintiff hereby repeats and realleges the factual allegations contained in paragraphs 1 through 42 above as though set forth in full herein.

44. By virtue of their confidential attorney-client relationship and Defendants' superior knowledge, it was reasonable for Plaintiff to repose trust and confidence in Defendants, and each of them, and a fiduciary relationship thereby existed where Plaintiff reasonably relied on the integrity and the fidelity of Defendants. As such, and by virtue of their status of attorney and client, Defendants owed fiduciary duties to Plaintiff to act with the highest degree of good faith and care in accordance with the highest legal ethical standards, and to disclose fully all material facts that could bear upon the subject matter of Plaintiff's relationship with Defendants.

45. By virtue of the foregoing acts and conduct on the part of Defendants, Defendants have breached their fiduciary duties owed to Plaintiff.

46. As a direct and proximate result of such professional negligence, Plaintiff has suffered damages as to items set forth in paragraphs 32-35 in the amount of \$30,558,000, together with prejudgment interest thereon at the legal rate, as well as additional damages, including but not limited to non-economic damages for severe emotional distress, attorneys' fees, costs, and expert fees, which amount is yet to be ascertained.

47. The conduct of Defendants, and each of them, as alleged above, was grossly negligent, unconscionable, fraudulent, oppressive, malicious and done intentionally or in conscious disregard of Plaintiff's rights and in order to protect themselves and further their own professional and financial self interest at Plaintiff's expense and to his detriment so as to justify an award of punitive damages.

THIRD CAUSE OF ACTION

(Breach of Contract)

48. Plaintiff hereby repeats and realleges the factual allegations contained in paragraphs 1 through 47 above as though set forth in full herein.

1 49. Defendant Rutter, Hobbs & Davidoff had a contract or contracts to represent
2 Hyan, which was or were sometimes oral only and sometimes partly oral and partly written.
3 Under such contract or contracts, Rutter, Hobbs & Davidoff was to fully and properly
4 advise, protect, document and memorialize Hyan's interests in the negotiation of his
5 separation from Lowe/LEIM, to properly edit, draft, review and approve the Separation
6 Agreement for Hyan's benefit, and to fully and properly protect his interests and truthfully
7 advise him as to the proper course of action to compensate him for damages caused by the
8 cessation of payments by Lowe/LEIM under the 1997 Separation Agreement.

9 50. As set forth above, Defendants breached the contract or contracts by not
10 performing their obligations under it or them.

11 51. Hyan has performed all conditions, covenants and/or promises required on his
12 part to be performed and/or incurred the obligations required pursuant to the terms of the
13 contract or contracts.

14 52. As a direct and proximate result of such professional negligence, Plaintiff has
15 suffered damages as to items set forth in paragraphs 32-35 in the amount of \$30,558,000,
16 together with prejudgment interest thereon at the legal rate, as well as additional damages,
17 including but not limited to non-economic damages for severe emotional distress, attorneys'
18 fees, costs, and expert fees, which amount is yet to be ascertained.

19 **FOURTH CAUSE OF ACTION**

20 (Intentional Infliction of Emotional Distress)

21 53. Plaintiff hereby repeats and realleges the factual allegations contained in
22 paragraphs 1 through 52 above as though set forth in full herein.

23 54. As set forth above, Defendants engaged in outrageous, unprivileged conduct.

24 55. Defendants intended or knew the probable result of their conduct would be to
25 cause Plaintiff to suffer physical and/or emotional distress or engaged in the conduct with
26 reckless or conscious disregard of the probability of causing Plaintiff to suffer physical
27 and/or emotional distress.

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1 56. As a result of Defendants' outrageous conduct, set forth above, Plaintiff has
2 suffered physical and severe emotional distress.

3 57. Such outrageous conduct of Defendants was a cause of the physical and/or
4 emotional distress suffered by Plaintiff.

5 58. As a direct and proximate result of such outrageous conduct, Plaintiff is
6 entitled to damages that will reasonably compensate him for all loss and harm, suffered by
7 Plaintiff, and caused by Defendants' conduct, according to proof.

8 59. The conduct of Defendants, and each of them, as alleged above, was grossly
9 negligent, unconscionable, fraudulent, oppressive, malicious and done intentionally or in
10 conscious disregard of Plaintiff's rights and in order to protect themselves and further their
11 own professional and financial self interest at Plaintiff's expense and to his detriment so as
12 to justify an award of punitive damages.

13 **FIFTH CAUSE OF ACTION**

14 (Negligent Infliction of Emotional Distress)

15 60. Plaintiff hereby repeats and realleges the factual allegations contained in
16 paragraphs 1 through 59 above as though set forth in full herein.

17 61. As set forth above, Defendants engaged in negligent conduct.

18 62. As a result of Defendants' negligent conduct, set forth above, Plaintiff has
19 suffered severe physical and/or emotional distress.

20 63. The Defendants' negligent conduct was a cause of the serious physical and/or
21 emotional distress.

22 64. As a direct and proximate result of such negligent conduct, Plaintiff is entitled
23 to damages that will reasonably compensate him for all loss and harm, suffered by Plaintiff,
24 and caused by Defendants' conduct, according to proof at trial.

25 65. The conduct of Defendants, and each of them, as alleged above, was grossly
26 negligent, unconscionable, fraudulent, oppressive, malicious and done intentionally or in
27 conscious disregard of Plaintiff's rights and in order to protect themselves and further their

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1 own professional and financial self interest at Plaintiff's expense and to his detriment so as
2 to justify an award of punitive damages.

3 **SIXTH CAUSE OF ACTION**

4 (Negligent Misrepresentation)

5 66. Plaintiff hereby repeats and realleges the factual allegations contained in
6 paragraphs 1 through 65 above as though set forth in full herein.

7 67. Defendants reasonably should have known the falsity of the representations
8 and omissions set forth above, and/or the need to disclose the omitted matters to make their
9 other statements not materially misleading.

10 68. Defendants reasonably should have known that Hyan would rely on their false
11 representations and/or omissions.

12 69. As a direct and proximate result of such negligent misrepresentation, Plaintiff
13 has suffered damages as to items set forth in paragraphs 32-35 in the amount of
14 \$30,558,000, together with prejudgment interest thereon at the legal rate, as well as
15 additional damages, including but not limited to non-economic damages for severe
16 emotional distress, attorneys' fees, costs, and expert fees, which amount is yet to be
17 ascertained.

18 70. The conduct of Defendants, and each of them, as alleged above, was grossly
19 negligent, unconscionable, fraudulent, oppressive, malicious and done intentionally or in
20 conscious disregard of Plaintiff's rights and in order to protect themselves and further their
21 own professional and financial self interest at Plaintiff's expense and to his detriment so as
22 to justify an award of punitive damages.

23 **SEVENTH CAUSE OF ACTION**

24 (Fraud and Deceit)

25 71. Plaintiff hereby repeats and realleges the factual allegations contained in
26 paragraphs 1 through 70 above as though set forth in full herein.

27 72. Defendants falsely and fraudulently made representations to Plaintiff. In
28 particular, Defendants falsely and fraudulently represented, among other things:

1 (a) That Rutter, Hobbs & Davidoff and each of its attorneys would
2 fully and properly protect Hyan's interests and truthfully advise him as to the
3 proper course of action to compensate him for damages caused by the
4 cessation of payments under the 1997 Separation Agreement;

5 (b) That Rutter, Hobbs & Davidoff and each of its attorneys would
6 use its best efforts, inform Hyan of the truth, keep Hyan informed, and tell
7 Hyan what was going to happen step by step;

8 (c) That when Lowe and LEIM discontinued payments to Hyan in
9 late 2006 or early 2007, that it was improper under the contract negotiated by
10 Rutter, Hobbs & Davidoff (instead of truthfully advising that the problem was
11 with the contract itself that was handled and approved by Rutter, Hobbs &
12 Davidoff), and that the remedy was to sue TriPacific and related entities
13 pursuant to the 1997 Separation Agreement, when in fact such a suit was
14 frivolous and without basis;

15 (d) That there was a legitimate basis for bringing a lawsuit and
16 pursuing arbitration claims against TriPacific and related entities based on the
17 argument that they were either successors or assigns under the 1997
18 Separation Agreement, when such an argument was frivolous and without any
19 basis;

20 (e) That a prominent law professor, who Rutter, Hobbs & Davidoff
21 had consulted in connection with the TriPacific arbitration, had reviewed the
22 file and the briefs and advised Rutter, Hobbs & Davidoff that their position
23 was strong and their briefs were "right on", and that the only reason Rutter,
24 Hobbs & Davidoff was not calling him as a witness in the arbitration was due
25 to scheduling conflicts, when in fact they were advised by an outside law
26 professor that their position was troubling and without proper basis;

27 (f) That the proper and ultimately successful approach after the
28 Interim Award issued by the Arbitrator against Hyan in June 2008 was to

1 continue briefing before the arbitrator and to file motions with the Los
2 Angeles Superior Court seeking to overturn the award and disqualify the
3 arbitrator, and that success was almost “guaranteed,” when in fact the suit was
4 frivolous and without basis.

5 73. These representations, among others, made by Rutter, Hobbs & Davidoff were
6 in fact false. The true facts were:

7 (a) That Rutter, Hobbs & Davidoff would not fully and properly
8 protect Hyan’s interests and truthfully advise him as to the proper course of
9 action to compensate him for damages caused by the cessation of payments
10 under the 1997 Separation Agreement, but instead would misdirect him to
11 baseless and meritless litigation against TriPacific in order to hide and cover
12 up Rutter, Hobbs & Davidoff’s original errors and mistakes and to protect the
13 firm and its attorneys at Hyan’s expense;

14 (b) That Rutter, Hobbs & Davidoff would not use its best efforts,
15 inform Hyan of the truth, keep Hyan informed, or tell Hyan what was going to
16 happen step by step; but instead would misdirect him to baseless and meritless
17 litigation against TriPacific in order to hide and cover up Rutter, Hobbs &
18 Davidoff’s original errors and mistakes and to protect the firm and its
19 attorneys at Hyan’s expense;

20 (c) That when Lowe and LEIM discontinued payments to Hyan in
21 late 2006 or early 2007, it was due to the problem with the language of the
22 contract itself, that was handled and approved by Rutter, Hobbs & Davidoff,
23 and which provided no obligation for Lowe, LEIM or any other entity to
24 continue payments to Hyan once the stream of income had been sold to a third
25 party and Lowe/LEIM was no longer receiving fees from the LACERA
26 program;

27 (d) That there was no legitimate basis for bringing a lawsuit and
28 pursuing arbitration claims against TriPacific and related entities based on the

1 argument that they were either successors or assigns under the 1997
2 Separation Agreement, when it was clear under straightforward California law
3 that TriPacific could not be a successor because LEIM still existed, none of
4 the tests for disregarding the standard rule of an asset purchase had been met,
5 and there was no basis for the proposition that any obligation to pay Hyan had
6 been assigned to TriPacific in the sale of LERA;

7 (e) That the prominent law professor consulted by Rutter, Hobbs &
8 Davidoff, after reviewing the file and the briefs, in fact told Rutter, Hobbs &
9 Davidoff that because LEIM still exists it therefore was not a successor, that it
10 was not a successor because it sold a unit of the entity getting income stream;
11 that he was uneasy with the matter given terms of the Separation Agreement
12 Rutter, Hobbs & Davidoff had obtained on Hyan's behalf, that he found the
13 language "so long as company continues to receive it" troublesome, and that
14 Rutter, Hobbs & Davidoff had decided not to call him as a witness in the
15 arbitration because of his opinions inconsistent with what Hyan was being
16 told;

17 (f) That the proper and ultimately successful approach after the
18 Interim Award issued by the Arbitrator against Hyan in June 2008 was not, as
19 advised, to continue briefing or filing motions in Los Angeles Superior Court
20 seeking to overturn the award and disqualify the arbitrator, which course could
21 only result in more damages to Hyan in the form of liability for attorneys' fees
22 and costs of TriPacific.

23 74. When Defendants made the above representations, they knew or should have
24 known them to be false, and they concealed the true facts as stated herein. Said false
25 representations were made by Defendants with the intent to defraud and deceive Plaintiff
26 and with the intent to induce Plaintiff to pursue the TriPacific litigation rather than look to
27 Rutter, Hobbs & Davidoff for the harm it had caused in the negotiation and approval of the
28 1997 Separation Agreement, which action by Plaintiff would further benefit Defendants

1 financially and further harm Hyan on top of the harm already caused by the negligently
2 drafted Separation Agreement, in an effort to save themselves from professional injury and
3 harm, and to hide and cover up Rutter, Hobbs & Davidoff's improper conduct.

4 75. In reasonable reliance on said false representations, among others, Plaintiff did
5 authorize Rutter, Hobbs & Davidoff to pursue and see through to conclusion litigation and
6 arbitration against TriPacific and related entities. Had Plaintiff known the true facts, he
7 would not have taken such actions and/or would have taken other actions. To wit, Plaintiff
8 would not have pursued an action against TriPacific and instead would have pursued a claim
9 against Rutter, Hobbs & Davidoff. Plaintiff's reliance on Defendant's representations was
10 justified and reasonable.

11 76. As a proximate result of Defendant's fraud, deceit and misrepresentation of
12 facts as herein alleged, Plaintiff acted upon Defendants' false representations and as a direct
13 and proximate result of such fraud and deceit, Plaintiff has suffered damages as to items set
14 forth in paragraphs 32-35 in the amount of \$5,958,000, together with prejudgment interest
15 thereon at the legal rate, as well as additional damages, including but not limited to non-
16 economic damages for severe emotional distress, attorneys' fees, costs, and expert fees,
17 which amount is yet to be ascertained.

18 77. The conduct of Defendants, as alleged above, was unconscionable, fraudulent,
19 oppressive, malicious and done intentionally or in conscious disregard of Plaintiff's rights
20 and in order to protect themselves and further their own professional and financial self
21 interest at Plaintiff's expense and to his detriment so as to justify an award of punitive
22 damages.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

25 **ON THE FIRST, SECOND, FOURTH, FIFTH, SIXTH, AND SEVENTH CAUSES**
26 **OF ACTION**

- 27 1. For compensatory damages, according to proof;

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1 2. For interest pursuant to, but not limited to, Cal. Civil Code Section
2 3287 for damages certain or capable of being made certain, and Sections 3288, 3289, and
3 3291;

4 3. For an award of punitive damages in an amount necessary to
5 punish the Defendants, and each of them;

6 4. For costs of suit, including attorneys' fees;

7 5. For such other and further relief as the Court may deem just, equitable
8 and proper.

9 **ON THE THIRD CAUSE OF ACTION**

10 6. For compensatory damages, according to proof;

11 7. For interest pursuant to, but not limited to, Cal. Civil Code Section
12 3287 for damages certain or capable of being made certain, and Sections 3288, 3289, and
13 3291;

14 8. For costs of suit, including attorneys' fees;

15 9. For such other and further relief as the Court may deem just, equitable
16 and proper.

17 Dated: January 19, 2010

HOWARTH & SMITH
DON HOWARTH
SUZELLE M. SMITH
DARCY R. HARRIS

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21 By: Don Howarth
Don Howarth

Attorneys for Plaintiff
JP HYAN

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: January 19, 2010

HOWARTH & SMITH
DON HOWARTH
SUZELLE M. SMITH
DARCY R. HARRIS

By: 
Don Howarth

Attorneys for Plaintiff
JP HYAN